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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JUAN M.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES et al.,

Real Parties in Interest.

B239391

(Los Angeles County
Super. Ct. No. CK88079)

ORIGINAL PROCEEDING. Petition for extraordinary writ. Anthony Trendacosta, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Petition denied. Law Offices of Timothy Martella, Rebecca Harkness, Trane Hunter for Petitioner. No appearance for Respondent. John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Emery El Habiby, Deputy County Counsel, for Real Party in Interest.

Juan M. (father), father of the minor child Sandra M., petitions for extraordinary relief pursuant to California Rules of Court, rule 8.450, et seq. He seeks review of an order setting a permanent plan hearing under Welfare and Institutions Code section 366.26.¹ Father asserts the juvenile court erred in finding adequate reunification services were provided to him, and in concluding he could not take custody of Sandra even after another period of reunification. We deny the petition.

FACTS AND PROCEDURAL HISTORY

In June 2011, Sandra was approximately two months old. Sandra's mother (mother), herself a minor and a dependent of the court, had a history of mental illness and of threatening self-harm.² Several weeks after Sandra was born, mother began having extreme mood swings and aggressive outbursts. On May 27, 2011, when mother had another episode, her case worker and a psychiatric team decided mother needed to be hospitalized. Sandra was detained and placed in foster care. Father was in juvenile hall at the time, facing attempted murder allegations. Though father was a minor and had also been a dependent of the court, he was being assessed for trial as an adult.

On June 2, 2011, the juvenile court approved Sandra's detention. The Department of Children and Family Services (DCFS) filed a section 300 petition, alleging as to father that he failed to protect Sandra and failed to provide for her support. Mother reported that father was incarcerated just after she became pregnant with Sandra, was disrespectful toward her and the baby, and did not contribute to their care. Father's aunt, however, had purchased some child care items for Sandra. When interviewed at juvenile hall, father acknowledged that he was in custody when Sandra was born and did not participate, but insisted that if he was not incarcerated he would have obtained a job in order to support

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Mother's challenge to the setting of a section 366.26 hearing was dismissed. Accordingly, mother is not a party to these proceedings.

his family. On July 7, 2011, the juvenile court sustained the petition. It directed that father receive family reunification services, to include individual counseling and parenting classes, as well as monitored visits. DCFS also investigated the possibility of placing Sandra with father's aunt, but the aunt's husband did not clear the criminal background check and the aunt failed to provide documentation necessary to pursue an exemption.

At a status hearing on November 18, 2011, DCFS reported that Sandra's foster mother had transported Sandra to juvenile hall to visit with father on two occasions. Both visits went well. DCFS also determined that father was to be tried as an adult. It did not indicate whether father was complying with his case plan. Mother, on the other hand, was not complying. She was causing problems due to intermittent visiting, hostility toward Sandra's foster mother, failure to remain in her placements, and losing touch with her counselor. The matter was continued six weeks to an already scheduled six-month review hearing, set for January 5, 2012.

At the six month review hearing, DCFS indicated that father remained incarcerated, so had not engaged in counseling or parenting classes as required by his case plan. However, after father requested a contested hearing, DCFS stipulated he would testify that he participated in a parenting class, anger management, and group counseling at juvenile hall, all on his own initiative. DCFS determined that father's criminal proceedings were continuing, with a pretrial hearing scheduled for January 20, 2012. Again, most of DCFS's efforts were absorbed dealing with mother's difficulties, along with monitoring Sandra's progress. Based on that evidence, the trial court found that DCFS had provided adequate reunification services, and although father was in compliance with his case plan, there was no substantial likelihood Sandra could be returned to him within another six month reunification period.³ Accordingly, it set the

³ Because Sandra is under three years of age, the standard reunification period is six months, possibly extended to 12 months. (§ 361.5, subd. (a)(1)(B).)

matter for a section 366.26 hearing in order to consider termination of parental rights. This timely petition followed.

DISCUSSION

Father first challenges the juvenile court's finding that reasonable reunification services were provided to him. The adequacy of reunification services is reviewed under the substantial evidence standard. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) When considering a challenge to the substantiality of the evidence, the appellate court will not reweigh the evidence, but will view the record in the light most favorable to the juvenile court's order. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Applying that standard to the record here, substantial evidence can be found to support the juvenile court's order.

Father's main contention is that DCFS failed to visit him in juvenile hall to examine what services were available to him and ensure he enrolled in those services. However, father himself located appropriate services and enrolled in them. His participation led the juvenile court to conclude that he was in compliance with his case plan. Thus, father's efforts to reunify were as successful as they could be under the circumstances. While more than one visit to father from a social worker might have added to evidence that DCFS provided adequate services, the record shows little prejudice to father from the failure of DCFS to contact him more regularly. As the court pointed out in *In re Misako R., supra*, 2 Cal.App.4th at page 547, "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances."

Father goes on to complain that he did not receive sufficient visitation. However, no substantial argument was made at the review hearing on that issue so that the juvenile court could address any problem. Instead, father's counsel acknowledged that father did

receive visitation, albeit limited. Again, while more visitation might have been better, it cannot be said that the trial court erred in finding DCFS provided adequate services to father given the circumstances of the case.

Finally, father argues the juvenile court erred in concluding that Sandra could not be safely returned to him even if reunification were continued to the 12 month limit. (§ 361.5, subd. (a)(1)(B).) But as of the time of the contested six-month review hearing, father was awaiting trial as an adult on attempted murder charges, and his case was still in pre-trial proceedings. As the juvenile court recognized, he would likely remain incarcerated for the remainder of any possible reunification period, making him unable to establish a suitable home for Sandra. That constituted substantial evidence upon which the court could rely to find there was no substantial probability of Sandra's returning to father. (*In re Angela S.* (1995) 36 Cal.App.4th 758, 763 [detriment finding reviewed for substantial evidence].) Even so, the juvenile court indicated it would entertain a section 388 petition if father was released from custody. Thus, it provided a pathway for father to alter the court's order should his circumstances change in time.

Father suggests for the first time in this petition that he could make arrangements with his aunt to take Sandra even if he remained incarcerated at the end of an extended reunification period. However, DCFS already examined the aunt as a potential placement for Sandra but could not clear the home. There is no evidence in the record indicating that father's speculative solution could be accomplished, let alone that such a possibility undermines the juvenile court's decision.

DISPOSITION

The petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(3).)

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.